JTH Tax, Inc. v. Whitaker Doc. 44

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JTH TAX, INC. d/b/a LIBERTY TAX SERVICE,

Plaintiff,

Civil No. 2:07cv170

v.

KENYA WHITAKER AND EASY SOFTWARE SOLUTIONS, LLC.,

Defendants.

ANSWER TO COUNTERCLAIM

Plaintiff and Counterclaim-Defendant, JTH Tax, Inc. d/b/a Liberty Tax Service ("Liberty"), by counsel, for its Answer to the Counterclaim filed against it responds as follows:

1-4. Admitted.

5. Admitted that in July 2003, Whitaker and Liberty entered into a franchise agreement ("Agreement") and that on August 14, 2003, the Agreement was amended into the name of ESS, Whitaker's closely held company, and that Whitaker continued as a guarantor of all obligations stated in the Agreement. Otherwise denied.

6. Admitted that Liberty agreed to provide advertising, marketing, advanced training, electronic filing, and software as specifically agreed upon in the Franchise Agreement. Otherwise denied.

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7. Admitted that Whitaker budgeted certain amounts and agreed to pay a 5% advertising fee to Liberty for use in accord with the franchise agreement. Otherwise denied.

8. Denied.

9. Denied.

10. Admitted that Liberty intercepted revenues destined for ESS in February 2004 to pay off ESS's promissory note with Liberty. Admitted that ESS paid the balance of the note in March 2005. Otherwise denied.

11. Admitted that ESS desired to engage in unproven marketing efforts instead of following the Liberty system. Otherwise denied.

12. Liberty is without sufficient information to admit or deny the allegations of paragraph 12 and hence denies same.

13. Admitted that ESS desired to engage in unproven marketing efforts instead of following the Liberty system. Admitted that John Hewitt spoke at the meeting. Otherwise denied.

14. Admitted that ESS contacted Liberty requesting to purchase additional territory and that Liberty responded with a written offer to ESS. Admitted that ESS subsequently rejected the offer. Otherwise denied.

15. Admitted that ESS prepared certain tax returns. Otherwise denied.

16. Admitted that ESS was offered Libtax software for 2007. Admitted that Liberty implemented a cost sharing plan whereby Liberty agreed pay to participating franchisees 50% of the costs of Yellow Page ads. Otherwise denied.

17. Admitted that Liberty sent the Libtax software in October 2006 and offered training on it. Admitted that Liberty makes available tax and technical support for tax and technical questions that franchisees have. Admitted that ESS sought technical support at various occasions during the ordinary course of business. Otherwise denied.

18. Admitted, except that issues were noted by the visiting Liberty representative which were not disclosed to Whitaker at the time.

19. Admitted that during the 2007 calendar year ESS had normal problems and errors that Liberty helped to resolve. Otherwise denied.

20. Admitted that Geoff Knapp visited ESS's office during business hours in an effort to inspect Whitaker's customer tax preparation records. Admitted that in a back room, Mr. Knapp privately asked Whitaker to provide the customer tax returns ESS had completed for that year. Admitted that Whitaker refused to give Mr. Knapp access to these records. Admitted that Mr. Knapp warned Whitaker that failure to provide this information was in violation of the franchise agreement and could lead to loss of her franchise. Liberty is without sufficient information to admit or deny the actions or comments of ESS's customers. Otherwise denied.

21. Admitted that Geoff Knapp again contacted Whitaker via telephone in an effort to gain Whitaker's compliance with the franchise agreement. Admitted that Whitaker refused to arrange a meeting until her husband Byron got back in town. Admitted that Byron sent Mr. Knapp an email on February 6, 2007 offering to schedule a meeting for February 28, 2007. Otherwise denied.

22. Admitted that Liberty sent ESS a letter terminating its franchise agreement. Admitted that ESS sent payment to Liberty for all outstanding amounts due to Liberty. Otherwise denied.

23. Denied.

24. Admitted.

25. Denied.

COUNT I
DECLARATORY RELIEF

26. Liberty incorporates by reference the answers and denials to paragraphs 1-25 above as if fully set forth herein.

27. Denied.

28. Admitted that ESS seeks certain relief but denied that ESS is entitled to any such relief.

COUNT II
BREACH OF CONTRACT

29. Liberty incorporates by reference the answers and denials to paragraphs 1-28 above as if fully set forth herein.

30. Denied.

COUNT III
NEGLIGENT MISREPRESENTATION

31. Liberty incorporates by reference the answers and denials to paragraphs 1-30 above as if fully set forth herein.

32-33. Denied.

COUNT IV
TORTIOUS INTERFERENCE

34. Liberty incorporates by reference the answers and denials to paragraphs 1-33 above as if fully set forth herein.

35. Denied.

COUNT V
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

36. Liberty incorporates by reference the answers and denials to paragraphs 1-35 above as if fully set forth herein.

37-38. These allegations constitute conclusions of law to which no response is required and hence Liberty denies same.

39. Denied.

WHEREFORE, in consideration of the foregoing, Plaintiff and Counterclaim-Defendant, JTH Tax, Inc., prays that the Counterclaim brought against it be dismissed, that it be awarded its costs incurred in defending this action, and that it be granted such other and further relief as to the Court may seem just and proper.

JTH Tax, Inc. d/b/a Liberty Tax Service

By: _________________/s/________________________
Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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